

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WANDA FRANCES WYATT

Claimant

VS.

PROVIDENCE MEDICAL CENTER

Self-Insured Respondent

Docket No. 1,022,361

ORDER

Claimant requests review of the May 25, 2005 preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

The Administrative Law Judge (ALJ) found the claimant did not sustain her burden of proof that she suffered an injury arising out of and in the course of employment and therefore denied temporary total disability benefits and medical treatment.

The claimant requests review of whether she suffered a work-related injury by aggravating a preexisting condition and, if so, whether she is entitled to medical treatment and temporary total disability compensation.

Respondent argues the Board does not have jurisdiction on an appeal from a preliminary hearing to address the issues of entitlement to temporary total disability compensation and medical treatment. Respondent requests the Board to affirm the ALJ's Order finding claimant failed to meet her burden of proof that she suffered accidental injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board finds the ALJ's findings and conclusions are accurate and supported by the law and the facts contained in the record. It is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and conclusions and adopts them as its own.

Briefly summarized, the claimant alleges that her 12-hour work shifts aggravated a preexisting ankle fracture that she suffered approximately 30 years ago. Although she testified she began experiencing pain within 6 months of starting the 12-hour work shift, she never complained nor sought medical treatment in the intervening 4 years. It was not

until the third meeting in a series of meetings regarding unsatisfactory work performance that she mentioned she was having ankle pain.

The ALJ noted in part:

The timing of the claimant's report of injury does call into question whether she truly had an injury, or was trying to avoid disciplinary action or termination for poor job performance. There was no evidence from a physician indicating a work related injury or aggravation.¹

When an ALJ renders a decision regarding the credibility of a witness who testifies in person before him the Board gives some deference to that opinion. In denying claimant's request for medical treatment and temporary total disability benefits, the ALJ apparently did not believe the claimant's testimony. The Board concludes that some deference may be given to the ALJ's findings and conclusions because he had the opportunity to judge the claimant's credibility by personally observing her testify. Moreover, as noted by the ALJ there was no medical evidence from a physician that claimant's work caused or aggravated her ankle problems.

Based upon the evidence compiled to date, the Board affirms the ALJ's finding that claimant failed to meet her burden of proof that she suffered accidental injury arising out of and in the course of her employment. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.²

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Kenneth J. Hursh dated May 25, 2005, is affirmed.

IT IS SO ORDERED.

Dated this 29th day of July 2005.

BOARD MEMBER

c: Timothy M. Alvarez, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ ALJ Order (May 25, 2005) at 2.

² K.S.A. 44-534a(a)(2).